

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-021-C - ORDER NO. 97-475
MAY 30, 1997

IN RE: Application of US WEST Interprise) AMENDED
America, Inc. for a Certificate of) ORDER
Public Convenience and Necessity to) APPROVING
Provide Intrastate Interexchange) CERTIFICATE
and Intraexchange Telecommunications)
Services within the State of)
South Carolina.)

This Order is issued to correct and replace Order No. 97-391, dated May 9, 1997, which contained certain scrivener's errors.

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of US WEST Interprise America, Inc. ("Interprise" or "the Company"). The Application requests that the Commission grant a Certificate of Public Convenience and Necessity for the Company to provide intrastate interexchange and intraexchange telecommunications services in the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter dated February 4, 1997, the Commission's Executive Director instructed Interprise to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which

to file the appropriate pleadings for participation in the proceedings. Interprise complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from BellSouth Telecommunications, Inc. ("BellSouth").

A hearing was convened on April 17, 1997, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Interprise was represented by Faye A. Flowers, Esquire, and the Commission Staff ("Staff") was represented by Florence P. Belser, Staff Counsel. BellSouth did not appear at the hearing.

Prior to the hearing, Interprise executed a Stipulation with the South Carolina Telephone Coalition ("SCTC"). The Stipulation is dated March 14, 1997 and was filed with the Commission that same day. The Stipulation was entered into evidence at the hearing as Hearing Exhibit No. 1. The Stipulation provides the following:

(1) The SCTC did not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Interprise if the Commission made the necessary findings to grant the Certificate and if all stipulated conditions are met;

(2) Interprise agreed that any Certificate granted by the Commission will authorize Interprise to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;

(3) Interprise agreed that it did not request the Commission

to find whether competition is in the public interest for rural areas;

(4) Interprise agreed that it would not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until Interprise provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Interprise also acknowledged that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

(5) Interprise agreed that if, after Interprise gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Interprise will not provide service to any customer located within the service area in question without prior and further Commission approval;

(6) Interprise acknowledged that any right which it may have or acquire to serve a rural telephone company service area in

South Carolina is subject to the conditions contained in this stipulation, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;

(7) Interprise and the SCTC agreed that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and

(8) Interprise agreed to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and Interprise and was filed with the Commission prior to the hearing in this matter. We therefore accept the stipulation.

At the hearing on this matter, Interprise presented Richard J. Boyer to testify in support of the Application. Mr. Boyer is the Public Policy Administrator for Interprise. The purpose of Mr. Boyer's testimony was to (1) address criteria established by the Commission for certification of telecommunications providers, (2) describe the services which Interprise proposes to offer to customers in South Carolina, and (3) describe the financial, managerial, and technical capability of the Company. According to

Mr. Boyer, Interprise proposes to provide intrastate interexchange and intraexchange (local) telecommunications services by which Interprise will primarily provide data communications.

DISCUSSION

The record reveals that Interprise proposes to provide intrastate communications services to commercial customers in South Carolina for their direct transmission and reception of voice, data, and other types of telecommunications and that initially Interprise proposes to offer Frame Relay Service and Private Line Data Interconnect (PLDI). According to Mr. Boyer, the demand for high-speed data communications is growing in all business segments, and Interprise is focused on meeting that growing demand for customers in South Carolina. Mr. Boyer testified that Interprise plans to purchase transport services and rights-to-use fiber optic facilities from the incumbent local exchange carrier through an interconnect agreement.

With respect to local service, S.C. Code Ann. §58-9-280 (Supp. 1996) provides that "the [C]ommission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC."

After full consideration of the applicable law, Interprise's Application, and the evidence presented at the hearing, the Commission finds and concludes that Interprise's request for a Certificate to provide local telephone service in the form of local exchange services and access services should be granted.

The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented which relates to that criteria:

(1) The Commission finds that Interprise possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). Regarding Interprise's technical qualifications, Mr. Boyer testified that Interprise will purchase transport services and rights-to-use fiber optic facilities from the incumbent local exchange carrier. Further, with the exception of certain network equipment which Interprise will install either on its own premises or on the customer's premises to modulate, digitize, compact, and translate a customer's data communications for delivery to the receiver, all construction and ownership of the network facilities are the responsibility of the telecommunications companies from which Interprise purchase transport facilities and rights-to-use.

To demonstrate Interprise's managerial qualifications, witness Boyer described the backgrounds of Interprise's key personnel and testified that Interprise's management team has considerable experience and expertise in the telecommunications industry. Regarding Interprise's financial resources, Mr. Boyer stated that Interprise is a Colorado corporation and is a wholly-owned subsidiary of US WEST Communications Group, Inc., which is in turn owned by US WEST, Inc. US WEST, Inc. also owns US WEST Communications, Inc. which is one of the Regional Bell

Operating Companies created at the divestiture of AT&T. Mr. Boyer testified that Interprise is financed through equity investments directly from US WEST, Inc. To demonstrate that Interprise has availability to the financial resources to permit Interprise to offer the services for which it seeks authority, Mr. Boyer testified that Interprise has the financial backing of US WEST, Inc.

No party offered any evidence in opposition to Mr. Boyer's testimony. Based on the undisputed testimony of Mr. Boyer, the Commission finds that Interprise possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that Interprise will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Boyer testified that Interprise intends to offer advanced data services with the features demanded by South Carolina customers. Mr. Boyer specifically stated that Interprise will meet all service standards that the Commission has or may adopt. No party offered any evidence to dispute Mr. Boyer's testimony. Based on the undisputed testimony from Mr. Boyer, the Commission believes, and so finds, that Interprise will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that Interprise's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp.

1996). Mr. Boyer stated that Interprise's entry into the South Carolina market would result in increased competition which should in turn lower costs to consumers. No party offered any evidence that the provision of local exchange service by Interprise would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by Interprise will not adversely impact affordable local exchange service.

(4) The Commission finds that Interprise will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Boyer testified that Interprise would participate in the universal service fund and that Interprise fully intends to comply with all South Carolina and federal universal service requirements, including any obligations to contribute to universal service mechanisms on the state and federal levels as the universal service mechanisms may apply to Interprise. No party disputed Mr. Boyer's testimony. Based on the undisputed evidence of record, the Commission finds that Interprise will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by Interprise "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Boyer offered that approval of Interprise's Application would expand the availability of technologically advanced communications services in South Carolina and should

result in increased competition which should in turn lower costs to consumers. Mr. Boyer's testimony was undisputed as no party offered any evidence that approval of Interprise's Application would adversely impact the public interest. Therefore, the Commission finds that approval of Interprise's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

In addition to requesting authority to provide local exchange and access services, Interprise requests authority to provide intrastate interexchange telecommunications services. As stated above, the record reveals Interprise's financial, technical, and managerial abilities to provide telecommunications services in South Carolina. The record further shows Interprise's services, operations and marketing procedures. Upon full consideration of Interprise's Application and the evidence presented at the hearing, the Commission finds that Interprise has the experience, capability, and financial resources to provide intrastate interexchange telecommunications services in South Carolina, and further the Commission finds and concludes that Interprise's request for a Certificate to provide intrastate interexchange telecommunications services should be granted.

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by Interprise should be granted.

IT IS THEREFORE ORDERED THAT:

1. Interprise is hereby granted a Certificate of Public Convenience and Necessity, and the accompanying authority, to provide intrastate interexchange telecommunications services and intrastate intraexchange (local) telecommunications services in the State of South Carolina. Interprise is hereby authorized to provide intrastate local exchange service in South Carolina, and Interprise is hereby authorized to provide intrastate interLATA services in South Carolina and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to Interprise's local service offerings, Interprise shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes to the proposed tariff to which Interprise agreed with the Commission Staff.

3. The Commission adopts a rate design for Interprise for its intrastate interLATA services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission.

In Re: Application of GTE Sprint Communications Corporation,

etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Interprise shall not adjust its rates for intrastate interLATA services below the approved maximum level without notice to the Commission and to the public. Interprise shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff for intrastate interLATA services which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1995).

5. With regard to its intrastate interLATA services, Interprise shall file its revised maximum tariff and an accompanying price list within thirty (30) days from the date of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. With regard to its intrastate interexchange services,

Interprise is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's offering of voice services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Interprise shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Interprise changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Interprise shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

10. Interprise shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well

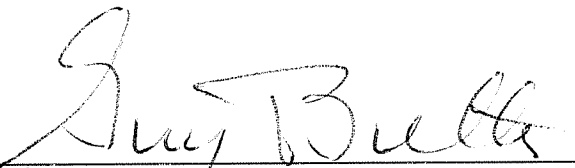
as emergencies which occur during non-office hours. Interprise shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

12. Interprise shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. The Stipulation filed by Interprise and the SCTC is approved by this Commission, is binding upon Interprise and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S**

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

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ATTACHMENT B

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230